107TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 107–770
Part 1

HEALTHY FORESTS AND WILDFIRE RISK REDUCTION ACT OF 2002

OCTOBER 31, 2002.—Ordered to be printed

Mr. HANSEN, from the Committee on Resources, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 5319]

The Committee on Resources, to whom was referred the bill (H.R. 5319) to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to expeditiously address wildfire prone conditions on National Forest System lands and other public lands that threaten communities, watersheds, and other at-risk landscapes through the establishment of expedited environmental analysis procedures under the National Environmental Policy Act of 1969, to establish a predecisional administrative review process for the Forest Service, to expand fire management contracting authorities, to authorize appropriations for hazardous fuels reduction projects, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Healthy Forests and Wildfire Risk Reduction Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

19–006

SEC. 2. PURPOSE.

The purpose of this Act is to reduce the risks of damage to communities, municipal water supplies, and some other at-risk landscapes from catastrophic wildfires.

SEC. 3. DEFINITION OF WILDLAND-URBAN INTERFACE AND PROCESS FOR REVISION OF DEFINITION.

(a) INITIAL DEFINITION.—In this Act, the term "wildland-urban interface" means a geographic area designated by the Secretary concerned, the Chief of the Forest Service, or the Director of the Bureau of Land Management as an area—

(1) that includes an Interface Community or Intermix Community (as those terms are defined on page 753 of volume 66 of the Federal Register, as published on January 4, 2001);

(2) on which conditions are conducive to large-scale fire disturbance events; and

(3) for which a significant risk exists of a resulting spread of the fire disturbance event, after ignition, that would threaten human life and property.

(b) REVISION OF DEFINITION.—Within three years after the date of the enactment of this Act, the Secretary of Agriculture and the Secretary of the Interior shall submit to Congress any proposed revision of the definition of wildland-urban interface in subsection (a) that the Secretaries find would better reflect regional and local differences in the intermixing of homes and other structures with Federal lands, the types of fire threats facing such lands, and the forest and rangeland types and conditions on such lands.

(c) CONSULTATION.—In the case of Federal lands located in States participating in the Western Governors' Association, the Secretary of Agriculture and the Secretary of the Interior shall consult with the Western Governors' Association in revising the definition proposed for wildland-urban interface.

SEC. 4. OTHER DEFINITIONS.

In this Act:

(1) CONDITION CLASS 2.—The term "condition class 2", with respect to an area of Federal lands, means that—

(A) fire regimes on the lands have been moderately altered from their historical range by either increased or decreased fire frequency; and

(B) there exists a moderate risk of losing key ecosystem components from fire.

(2) CONDITION CLASS 3.—The term "condition class 3", with respect to an area of Federal lands, means that—

(A) fire regimes on the lands have been significantly altered from their historical return interval and fire frequencies have departed from historical ranges by multiple return intervals;

(B) there exists a high risk of losing key ecosystem components from fire;

(C) vegetation composition, structure, and diversity have been significantly altered; and

(D) the lands verge on the greatest risk of ecological collapse as a result of fire.

(3) CONGRESSIONAL COMMITTEES OF JURISDICTION.—The term "congressional committees of jurisdiction" means the Committee on Resources and the Committee on Agriculture of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(4) DAY.—The term "day" means a calendar day.

(5) FEDERAL LANDS.—The term "Federal lands" means—

(A) National Forest System lands; and

(B) public lands administered by the Secretary of the Interior acting through the Bureau of Land Management.

(6) HAZARDOUS FUELS REDUCTION PROJECT.—The term "hazardous fuels reduction project" means a project undertaken on Federal lands for the purpose of reducing the amount of hazardous fuels present on the lands through the use of prescribed burning or mechanical treatment. Chemical or biological treatment may only be used in conjunction with prescribed burning or mechanical treatment.

(7) MUNICIPAL WATER SUPPLY SYSTEM.—The term "municipal water supply system" means the reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, or other surface facilities and systems constructed or installed for the impound-

ment, storage, transportation, or distribution of drinking water for a community.

(8) OTHER AT-RISK FEDERAL LANDS.—The term "other at-risk Federal lands" means Federal lands identified by the Secretary concerned as an area where windthrow or blowdown or the existence or threat of large-scale disease or insect infestation pose a significant threat to forest or rangeland health and an attendant increase in the risk of catastrophic wildfire.

(9) SECRETARY CONCERNED.—The term "Secretary concerned" means—

(A) the Secretary of Agriculture (or the designee of the Secretary) with respect to the Federal lands described in paragraph (5)(A); and

(B) the Secretary of the Interior (or the designee of the Secretary) with respect to the Federal lands described in paragraph (5)(B).

(10) SCOPING.—The term "scoping" means an open process conducted in accordance with applicable regulations and agency guidelines, including section 1501.7 of title 40, Code of Federal Regulations, where applicable, as in effect on the date of the enactment of this Act, during the preparation of a hazardous fuels reduction project.

(11) THREATENED AND ENDANGERED SPECIES HABITAT.—The term "threatened and endangered species habitat" means Federal lands identified in the listing decision or critical habitat designation as habitat containing a threatened species or an endangered species consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 5. HAZARDOUS FUELS REDUCTION PROJECTS COVERED BY THIS ACT.

(a) COVERED PROJECTS.—This Act applies only with respect to a hazardous fuels reduction project undertaken by the Secretary concerned on Federal lands found by the Secretary concerned to be in condition class 3 (or condition class 2 and adjacent to, or intermingled with, condition class 3 lands) if the Federal lands—

(1) are located in the wildland-urban interface;

(2) are located in such proximity to a municipal water supply system that the risk of adverse effects to the water quality of the municipal water supply from a catastrophic wildfire, including the risk of erosion following a catastrophic wildfire, necessitates use of the processes established under this Act;

(3) are other at-risk Federal lands; or

(4) are not covered by paragraph (1), (2), or (3), but, subject to subsection (b), are found by the Secretary concerned to contain threatened and endangered species habitat.

(b) ADDITIONAL REQUIREMENTS FOR THREATENED AND ENDANGERED SPECIES HABITAT.—This Act does not apply to Federal lands described in subsection (a)(4) unless—

(1) natural fire regimes are identified in a species recovery plan as being important for the threatened species or endangered species at issue or its habitat;

(2) the project will provide enhanced protection from catastrophic wildfire for the species or its habitat; and

(3) the Secretary complies with any applicable guidelines specified in the species recovery plan.

(c) ACREAGE LIMITATION.—Not more than 2,000,000 acres of the aggregate of the Federal lands described in paragraphs (3) and (4) of subsection (a) may be treated in any fiscal year by hazardous fuels reduction projects for which the processes established under this Act are used.

(d) ADDITIONAL LIMITATION.—In conducting a hazardous fuels reduction project for which the processes established under this Act are used, if the Federal lands to be treated by the project contain fire resistant, pre-fire-exclusion old and large trees, the Secretary concerned shall limit the removal of such trees so as to maintain as nearly as possible an ecologically optimum number of such trees, as determined by the Secretary concerned on a project-by-project basis, appropriate for each ecosystem type. The Secretary concerned shall also emphasize thinning from below for the project.

(e) EXCLUSION OF CERTAIN FEDERAL LANDS.—This Act does not apply to the following Federal lands:

(1) A component of the National Wilderness Preservation System.

(2) Federal lands where, by Act of Congress or Presidential proclamation, the removal of vegetation is prohibited or restricted.

(3) Wilderness Study Areas.

(f) PROTECTION OF ROADLESS AREAS.—The Secretary of Agriculture shall not construct any new road in any Inventoried Roadless Area as part of any hazardous fuels reduction project for which the processes established under this Act are used.

SEC. 6. RESERVATION OF HAZARDOUS FUELS REDUCTION PROJECT FUNDS FOR PROJECTS IN WILDLAND-URBAN INTERFACE.

(a) RESERVATION.—Of the total funds expended by the Secretary concerned during each of the fiscal years 2003 through 2005 to plan and carry out hazardous fuels reduction projects covered by this Act, not less than 70 percent shall be expended for hazardous fuels reduction projects on Federal lands in the wildland-urban interface.

(b) PRIORITY PROJECTS.—In conducting hazardous fuels reduction projects covered by this Act, the Secretary concerned, in the sole discretion of the Secretary, shall seek to give priority to those projects that would provide the greatest protection to human lives and property.

SEC. 7. ENVIRONMENTAL ANALYSIS.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary concerned shall conduct the environmental review for a hazardous fuel reduction project covered by this Act in accordance with section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)).

(b) DISCRETIONARY AUTHORITY TO ELIMINATE ALTERNATIVES.—In the case of a hazardous fuels reduction project covered by this Act, the Secretary concerned is not required to study, develop, or describe any alternative to the proposed agency action in any environmental assessment or environmental impact statement prepared for the proposed agency action pursuant to section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)). At the discretion of the Secretary concerned, the Secretary may consider alternatives to the proposed agency action.

(c) EFFECT OF PROPOSED PERMANENT ROAD CONSTRUCTION.—If a proposed hazardous fuels reduction project covered by this Act includes the construction of a new permanent system road, the Secretary concerned shall include consideration of one alternative that does not include such road construction in any environmental assessment or environmental impact statement prepared for the proposed agency action. At the discretion of the Secretary concerned, the Secretary may consider alternatives to the proposed agency action.

(d) PUBLIC NOTICE.—

(1) QUARTERLY NOTICE.—The Secretary concerned shall provide quarterly notice, in the Federal Register, a local paper of record, and on an agency website, regarding all hazardous fuels reduction projects of the Secretary concerned for which the processes established under this Act are to be used.

(2) PUBLIC HEARING.—Upon publication of the quarterly notice under paragraph (1), the Secretary concerned shall conduct a public meeting at an appropriate location in each unit of the Federal lands for which hazardous fuels reduction projects are proposed in the quarterly notice at which interested persons may provide input on the quarterly notice.

(3) SPECIAL RULE.—If an incident arises shortly after a quarterly notice under paragraph (1) is published that the Secretary concerned determines should be promptly addressed through a hazardous fuels reduction project for which the processes established under this Act are to be used, notice of the project in the paper of record shall suffice for purposes of this subsection.

(4) CONTENT.—The notice required by this subsection shall include the approximate date on which scoping for the hazardous fuels reduction projects will begin and information regarding how interested members of the public can take part in the development of the project.

(e) PUBLIC COMMENT.—With respect to each hazardous fuels reduction project for which the processes established under this Act are to be used, the Secretary concerned shall conduct scoping in accordance with applicable regulations and administrative guidelines in effect on the date of the enactment of this Act. The Secretary concerned shall provide an opportunity for public comment.

SEC. 8. FOREST SERVICE ADMINISTRATIVE APPEAL PROCESS.

(a) ADMINISTRATIVE APPEAL PROCESS.—The Secretary of Agriculture shall use the following administrative appeal process to consider appeals regarding hazardous fuels reduction projects covered by this Act to be conducted on National Forest System lands.

(b) NOTICE OF OPPORTUNITY TO APPEAL.—

(1) AVAILABILITY.—Under this administrative appeal process, the environmental analysis document, analysis file, and decision document for a hazardous fuels reduction project shall be complete and available for public review once notice of the decision document is provided in the local paper of record.

(2) SUBSEQUENT REVISION.—Except as provided in subsection (e)(2), the environmental analysis document, analysis file, and decision document may not be revised after it is made available to the public unless the Secretary concerned

provides new public notice and recommences the time limits specified in this section for the project.

(c) SUBMISSION OF NOTICE OF INTENT TO APPEAL.—

(1) ELIGIBILITY.—To be eligible to appeal a hazardous fuels reduction project under this administrative appeal process, the person submitting the notice must have submitted specific and detailed comments during the preparation stage of the project on an issue specifically related to the project for which the appeal is sought.

(2) TIME LIMITS.—Eligible persons shall be given a 10-day period, beginning on the date the signed decision document for the hazardous fuels reduction project is made available to the public, during which to submit written notice of an intent to appeal the decision. Notice submitted after the end of such period shall not be accepted.

(3) EFFECT OF FAILURE TO SUBMIT NOTICE OF INTENT TO APPEAL.—If valid notice is not submitted within the required 10-day period, the hazardous fuels reduction project shall not be subject to appeal under this administrative appeal process or any other provision of law, and the decision document shall be considered the final agency decision.

(4) EFFECT OF TIMELY SUBMISSION.—Upon the timely filing of notice under this subsection, the Secretary of Agriculture shall take no action to implement the hazardous fuels reduction project until the completion of the appeal process.

(d) FILING OF APPEAL.—If an eligible person timely submits notice under subsection (c) with regard to a hazardous fuels reduction project, the Secretary of Agriculture shall give the person a 15-day period during which to file the administrative appeal. The 15-day period shall begin at the end of the 10-day period required by subsection (c), not on the day the notice is filed.

(e) REVIEW OF APPEAL.—

(1) TIME FOR REVIEW.—Upon receipt of the administrative appeal with regard to a hazardous fuels reduction project, the appeals officer shall consider and render a decision on the appeal within 25 days.

(2) NEW DECISION DOCUMENT.—The appeals officer may sign a new decision document correcting errors or otherwise modifying the decision document, rather than remanding the case for further proceedings. If the appeals officer signs a new decision document, the appeals officer shall supplement the record with explanatory analysis and documentation. The new decision document shall be considered the final agency decision.

(f) NEGOTIATIONS.—The appeals officer may enter into negotiations with the appellants and other interested persons who filed comments during the preparation stage of the hazardous fuels reduction project. Any decision document resulting from the negotiations shall be considered the final agency decision.

(g) RELATION TO EXISTING AUTHORITY.—Section 322 of the Department of the Interior and Related Agencies Appropriations Act, 1993 (Public Law 102–381; 16 U.S.C. 1612 note) shall not apply to a hazardous fuels reduction project covered by this Act.

SEC. 9. JUDICIAL REVIEW IN UNITED STATES DISTRICT COURTS.

(a) PLACE AND TIME OF FILING.—A hazardous fuels reduction project covered by this Act shall be subject to judicial review only in the United States district court for the district in which the Federal lands to be treated under the project are located. Notwithstanding any other provision of law, any challenge to the hazardous fuels reduction project must be filed in such district court before the end of the 15-day period beginning on the date on which the Secretary concerned publishes, in the local paper of record, notice of the final agency action. The Secretary concerned may not agree to, and a district court may not grant, a waiver of the requirements of this subsection.

(b) EFFECT OF FILING ON PROJECT.—Upon the timely filing of a challenge to a hazardous fuels reduction project covered by this Act, the Secretary concerned shall take no action to implement the project until the district court has rendered a decision on the merits of the appeal.

(c) TIME FOR DECISION.—

(1) IN GENERAL.—Civil actions filed under this section shall be assigned for hearing at the earliest possible date. Except as provided in paragraph (2), the district court shall render its final decision relative to any challenge within 60 days after the date on which the challenge is brought. The challenge shall not be dismissed as moot by the district court for failure of the court to render its final decision within this time period, including any extension provided pursuant to paragraph (2).

(2) EXTENSION.—The district court shall extend the deadline specified in paragraph (1)—

(A) if the court determines that a longer period of time is required to satisfy the due process requirements of the United States Constitution;

(B) at the request of the United States (but not to exceed 15 days and not on more than one occasion);

(C) at the request of one appellant (but only one appellant and not to exceed 15 days and not on more than one occasion); and

(D) at the discretion of the court (but not to exceed 30 days and not on more than one occasion) .

(3) SPECIAL MASTER.—In order to reach a timely decision on a challenge, the district court may assign all or part of any such case or cases to one or more Special Masters for prompt review and recommendations to the court.

(d) JUDICIAL RELIEF.—The district courts shall have authority to enjoin permanently or void a hazardous fuels reduction project covered by this Act. On account of the effect of the timely filing of a challenge to the hazardous fuels reduction project on the authority of the Secretary concerned to implement the project, as provided by subsection (b), no temporary restraining order or preliminary injunction shall be issued by the district court in connection with the project.

(e) PROCEDURES.—The district court may set rules governing the procedures of any proceeding brought under this section which set page limits on briefs and time limits on filing briefs and motions and other actions that are shorter than the limits specified in the Federal rules of civil or appellate procedure.

(f) APPEAL.—Any appeal from the final decision of a district court in an action brought pursuant to this section shall be filed as otherwise provided by law.

SEC. 10. GAO AUDIT.

(a) AUDIT REQUIRED.—Not later than 18 months after the date of the enactment of this Act, and from time-to-time thereafter, the Comptroller General shall conduct an audit of the implementation of this Act to determine the extent to which the processes established under this Act and the hazardous fuels reduction projects planned and implemented using those processes are achieving the purpose of this Act.

(b) REPORT REQUIRED.—The Comptroller General shall submit to the congressional committees of jurisdiction a report containing the results of each audit.

SEC. 11. STEWARDSHIP CONTRACTING.

(a) SECRETARY OF AGRICULTURE.—During the period beginning on the date of the enactment of this Act and ending on September 30, 2005, the Secretary of Agriculture, via agreement or contract as appropriate, may enter into not more than an additional 15 stewardship and end result contracts under the authority provided in section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (as enacted by section 101(e) of division A of Public Law 105–277; 16 U.S.C. 2104 note), for the performance of hazardous fuels reduction projects (for which the processes established under this Act are used) on National Forest System lands.

(b) SECRETARY OF THE INTERIOR.—During the period beginning on the date of the enactment of this Act and ending on September 30, 2005, the Secretary of the Interior, via agreement or contract as appropriate, may enter into not more than 26 stewardship and end result contracts for the performance of hazardous fuels reduction projects (for which the processes established under this Act are used) on Federal lands described in section 4(5)(B), other than revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands. The stewardship and end result contracts shall be entered into in the same manner as provided for the Forest Service under section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note).

(c) PAYMENT BASIS.—Notwithstanding subsections (a) and (b), payments under a stewardship and end result contract entered into under such subsections may be on a fee for service basis to achieve the goals of the hazardous fuels reduction project. Cash payments may be reduced by the value of goods delivered by the contract, except that tree removal or thinning under the project shall be governed solely by the goal of fulfilling the purpose of this Act, not by the value of the goods delivered.

(d) COOPERATION.—To the extent practicable, the stewardship and end result contracts authorized by this section shall be developed using a collaborative process that includes local communities and public land interest groups.

(e) REPORT ON BLM EXPANSION.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Interior shall submit to the congressional committees of jurisdiction a report regarding the desirability of expanding the authority under subsection (b) to include—

(1) hazardous fuels reduction projects on those revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands that are in

condition class 3 condition class 2 and for which the processes established under this Act may be used; and

(2) hazardous fuels reduction projects on any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands that are in condition class 3 or condition class 2, but are covered by an exclusion under section 5(e).

SEC. 12. DURATION.

(a) IN GENERAL.—The processes established under this Act shall be available through September 30, 2005, with regard to hazardous fuels reduction projects described in section 5(a).

(b) CONTINUATION OF NOTICED PROJECTS.—A hazardous fuels reduction project identified in a quarterly notice published in the Federal Register as required by section 7(c) before the date specified in subsection (a) may proceed to completion after that date using the processes established under this Act.

SEC. 13. RULES OF CONSTRUCTION.

(a) RELATION TO OTHER AUTHORITY.—Nothing in this Act shall be construed to affect, or otherwise bias, the use by the Secretary concerned of other statutory or administrative authorities to implement a hazardous fuels reduction project on Federal lands identified in section 5(e) where the use of the authorities established under this Act is prohibited.

(b) RELATION TO LEGAL ACTION.—Nothing in this Act shall be construed to prejudice or otherwise affect the consideration or disposition of any legal action concerning the Roadless Area Conservation Rule, part 294 of title 36, Code of Federal Regulations, as amended in the final rule and record of decision published in the Federal Register on January 12, 2001 (66 Fed. Reg. 3244).

SEC. 14. RELATION TO COLLABORATIVE 10-YEAR STRATEGY FOR REDUCING WILDLAND FIRE RISKS TO COMMUNITIES AND THE ENVIRONMENT.

The Secretary concerned shall conduct immediately and to completion hazardous fuels reduction projects on Federal lands consistent with the implementation plan for the "Collaborative 10-year Strategy for Reducing Wildland Fire Risks to Communities and the Environment", dated May 2002, which was developed pursuant to the report to accompany the Department of the Interior and Related Agencies Appropriations Act, 2001 (House Report 106–646). Any project carried out pursuant to this section shall be consistent with the applicable land and resource management plan, land use plan, or other applicable agency plan.

SEC. 15. MONITORING BY INDEPENDENT PANEL.

(a) MONITORING REQUIREMENTS.—The Secretary of Agriculture and the Secretary of the Interior shall jointly establish an independent panel to conduct a general assessment, using accepted measures, indicators, and sampling techniques, of the general success of hazardous fuels reduction projects for which the processes established under this Act are used in achieving the purpose of this Act. The panel shall catalogue any adverse environmental effects or unforeseen ecological consequences associated with the projects, if any occur.

(b) MEMBERSHIP.—The panels established under this section shall consist in part of members nominated by the Chairmen and ranking minority members of each of the congressional committees of jurisdiction.

(c) ANNUAL ASSESSMENT AND REPORTING.—The assessment required by subsection (a) shall be performed on an annual basis, and the panel shall submit to the Secretary concerned and the congressional committees of jurisdiction an annual report containing the results of the assessment.

(d) SECRETARIAL RESPONSE.—The Secretary concerned shall respond to the annual report of the panel, and that response shall be included in the copy of the report submitted to the congressional committees of jurisdiction.

SEC. 16. AUTHORIZATION OF APPROPRIATIONS.

(a) NATIONAL FOREST SYSTEM LANDS.—There are authorized to be appropriated to the Secretary of Agriculture such sums as may be necessary to carry out this Act and to plan and conduct hazardous fuels reduction projects on National Forest System lands.

(b) BLM LANDS.—There are authorized to be appropriated to the Secretary of Interior such sums as may be necessary to carry out this Act and to plan and conduct hazardous fuels reduction projects on Federal lands described in section 4(5)(B).

Amend the title so as to read:

A bill to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and implement hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands in the wildland-urban

interface, in areas containing municipal water supply systems, in areas containing threatened and endangered species habitat, and in areas where windthrow or blowdown or the existence or threat of large-scale disease or insect infestation pose a significant threat to forest and rangeland health and an attendant increase in the risk of catastrophic wildfire, and for other purposes.

PURPOSE OF THE BILL

The purpose of H.R. 5319, as ordered reported, is to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and implement hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands in the wildland-urban interface, in areas containing municipal water supply systems, in areas containing threatened and endangered species habitat, and in areas where windblow or blowdown or the existence or threat of large-scale disease or insect infestation pose a significant threat to forest and rangeland health and an attendant increase in the risk of catastrophic wildfire, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Millions of acres of federal lands are at unnaturally high risk to catastrophic wildfire because of the unhealthy build-up of fire fuels. The impending specter of large-scale catastrophic wildfire on these federal lands presents a clear and present threat to the health and safety of scores of communities, homes and ecosystems. Active forest and rangeland management is the only way to lessen the growing risk of catastrophic wildfire on the federal forests and rangelands.

The Committee agrees with assertions made by the Secretary of Agriculture, the Secretary of the Interior, and other senior federal land managers that the legal morass of laws, regulations, administrative procedures, and court decisions impose undesirably cumbersome process requirements that make active forest and rangeland management a virtual impossibility on any meaningful scale. The Committee finds that these statutory and regulatory burdens should be reduced on certain at risk landscapes in order to empower federal land managers to address wildfire prone conditions on where these conditions threaten communities, watersheds, and other areas.

Geographic scope

As ordered reported, H.R. 5319 establishes truncated analysis and review procedures applicable to hazardous fuels reduction projects on certain National Forest lands and lands administered by the Bureau of Land Management. The expedited authorities established under the bill are limited to use on certain lands in the: (1) wildland/urban interface, which is defined by density of homes and populations; (2) municipal watersheds where municipal water supplies are present; (3) habitat for threatened and endangered species where wildfire risks are identified in the recovery plan of a threatened or endangered species; and (4) lands where windthrow or blowdown or the threat of large-scale disease or insect infestation pose a threat to forest or rangeland health and an attendant increase in the risk of catastrophic wildfire. The bill as amended limits the number of acres treated in the threatened and endangered species and forest health categories (categories 3 and 4) to

two million acres a year combined. The legislation additionally provides that, of the total funds expended under the bill, not less than 70 percent must be expended to treat the wildland/urban interface.

National Environmental Policy Act

Currently agencies are required under the National Environmental Policy Act (NEPA) to consider three to five alternatives to the proposed federal agency action, which takes considerable time and resources. Some NEPA experts estimate that each alternative developed and considered results in a 20 percent increase in the amount of analysis and documentation. H.R. 5319 as ordered reported provides the agencies discretionary authority to limit analysis during the NEPA phase to the proposed action, meaning the agencies would not be required to study, develop or analyze a range of alternatives. The one exception is for projects implemented under the bill that include the building of new permanent roads, in which case the agency would be required to study, develop and analyze an alternative that does not provide for the building of new roads. While narrowing the number of alternatives considered, the amendment increases public notice requirements and codifies scoping requirements in effect on the date of enactment of the bill.

Administrative appeals

The appeals process prescribed by H.R. 5319 as ordered reported would be limited to 50 days, reduced from the current process, which lasts 120 days, and sometimes more. The new appeals process gives appellants 10 days to give notice of their intent to appeal, 15 days to file an appeal, and the Forest Service 25 days to decide on the merits of the appeal. Additionally, only persons who submitted specific and detailed comments during the preparation stage of the project are eligible to file administrative appeals. Finally, the bill as ordered reported gives appeals review officers the discretionary authority to sign a new decision document at the end of the appeals process, instead of requiring project and/or analysis modifications made pursuant to an administrative appeal to go through the time-consuming remand process.

Judicial review

Under the bill as ordered reported, judicial review can only be sought in the federal district court with jurisdiction over where the proposed action is located. The bill as ordered reported directs that plaintiffs file causes of action within 30 days following the end of the appeals process. On the filing of a challenge, the Secretary concerned is required to stay the project until the completion of the District Court's review. With this administratively imposed stay in place, motions for temporary restraining orders and preliminary injunctions are moot, and are therefore expressly prohibited.

Because of the exigent circumstances surrounding these projects, Congress mandates that federal District Courts decide on the underlying merits of an action brought in relation to a project proposed under this bill within 60 days, though the Court may extend that deadline under narrowly drawn and expressly limited circumstances. These deadlines are binding, and not merely advisory. The Committee finds that the projects covered by the bill are of great importance and urgency and that, as such, federal District

Courts should move with maximum dispatch, consistent with the deadlines in the bill as ordered reported, in deciding on the merits of judicial actions brought against these projects.

Annual General Accounting Office audit

The bill as ordered reported requires the Comptroller General to conduct an audit of the implementation of the bill to determine the success of the processes established under the bill and the hazardous fuels reduction projects implemented in achieving the purpose of the bill.

Stewardship and end result contracts

The Forest Service is given the authority to enter into 15 additional stewardship contract pilot projects. The Bureau of Land Management is authorized to enter into 26 stewardship contract pilot projects, with the restriction that those projects cannot be implemented on Oregon and California lands. These additional Stewardship Contract Pilot Projects are confined to implementing projects authorized by this bill.

Duration, limitations and rules of construction

The authorities established under H.R. 5319 shall be available through September 30, 2006. Projects noticed under the procedures outlined in the legislation by this date shall be completed under the processes established under this bill.

The Forest Service and Bureau of Land Management are prohibited from using the expedited analysis procedures established in this bill in wilderness areas, and lands where, by Act of Congress or Presidential proclamation, the removal of vegetation is prohibited or restricted. Nothing in the bill, however, places any limits whatsoever on the authorities of land mangers to implement hazardous fuels reduction projects under other allowances and authorities.

Additionally, the bill provides that the Forest Service will not be allowed to build new roads in Inventoried Roadless Areas (IRAs) under the bill's expedited procedures, though the Forest Service would be allowed to implement fuels reduction projects in IRAs under the expedited provisions provided they do not have a road-building component. Moreover, the bill does nothing to diminish the Forest Service's authority to build roads in IRAs as needed in IRAs under existing procedures.

Finally, nothing in the bill as amended is intended to bias or otherwise affect the following: (1) litigation involving the Roadless Area Conservation Rule; or (2) the authority of the Secretaries to implement hazardous fuels reduction projects under other available authorities on any federal lands, including those lands where the expedited procedures in this bill are expressly allowed, in Section 5(a), or expressly prohibited, in Section 5(e).

COMMITTEE ACTION

Congressman Scott McInnis (R–CO) introduced H.R. 5319 on September 4, 2002. The bill was referred primarily to the Committee on Resources and additionally to the Committee on Agriculture. On September 5, 2002, the Resources Committee held a

hearing on the bill. On October 8, 2002, the Resources Committee met to consider the bill.

Mr. McInnis offered an amendment in the nature of a substitute which reflected negotiations among several Members of the Committee and the Administration. Congressman Jay Inslee (D–WA) offered a substitute amendment to the McInnis amendment in the nature of a substitute. The Inslee amendment was not agreed to by a roll call vote of 12 ayes to 25 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
107th Congress

Date: October 8, 2002

Convened: 10:00am
Adjourned: 3:40pm

Meeting on: **H.R. 5319, Amendment #1A offered by Mr. Inslee to the Amendment in the Nature of a Substitute .**

☐ Attendance ☐ Voice Vote ☒ Roll Call Vote Total Yeas 12 Nays 25

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Hansen, UT, Chairman		✓		Mr. Jones, NC		✓	
Mr. Rahall, WV	✓			*Mr. Kind, WI*			
Mr. Young, AK				Mr. Thornberry, TX			
Mr. Miller, CA		✓		*Mr. Inslee, WA*	✓		
Mr. Tauzin, LA				Mr. Cannon, UT		✓	
Mr. Markey, MA	✓			*Mrs. Napolitano, CA*			
Mr. Saxton, NJ				Mr. Peterson, PA		✓	
Mr. Kildee, MI	✓			*Mr. Tom Udall, NM*	✓		
Mr. Gallegly, CA		✓		Mr. Schaffer, CO			
Mr. DeFazio, OR		✓		*Mr. Mark Udall, CO*	✓		
Mr. Duncan, TN				Mr. Gibbons, NV		✓	
Mr. Faleomavaega, AS				*Mr. Holt, NJ*	✓		
Mr. Hefley, CO		✓		Mr. Souder, IN		✓	
Mr. Abercrombie, HI		✓		*Mr. Acevedo-Vilá, PR*	✓		
Mr. Gilchrest, MD				Mr. Walden, OR		✓	
Mr. Ortiz, TX				*Ms. Solis, CA*			
Mr. Calvert, CA				Mr. Simpson, ID		✓	
Mr. Pallone, NJ	✓			*Mr. Carson, OK*		✓	
Mr. McInnis, CO		✓		Mr. Tancredo, CO		✓	
Mr. Dooley, CA		✓		*Ms. McCollum, MN*	✓		
Mr. Pombo, CA		✓		Mr. Hayworth, AZ		✓	
Mr. Underwood, GU				*Mr. Holden, PA*			
Mrs. Cubin, WY		✓		Mr. Otter, ID		✓	
Mr. Smith, WA	✓			Mr. Osborne, NE		✓	
Mr. Radanovich, CA		✓		Mr. Flake, AZ		✓	
Ms. Christensen, VI	✓			Mr. Rehberg, MT		✓	
				Total	**12**	**25**	

Congressman Tom Udall (D–NM) offered an amendment to the McInnis amendment in the nature of a substitute which added a new provision to section 9 entitled "Relation to Criminal Case Workload". This amendment was not agreed to by a roll call vote of 13 ayes to 24 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
107th Congress

Date: October 8, 2002

Convened: 10:00am
Adjourned: 3:40pm

Meeting on: **H.R. 5319, Amendment #1B offered by Mr. Tom Udall to the Amendment in the Nature of a Substitute .**

☐ Attendance ☐ Voice Vote ☒ Roll Call Vote Total Yeas 13 Nays 24

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Hansen, UT, Chairman		✓		Mr. Jones, NC		✓	
Mr. Rahall, WV	✓			*Mr. Kind, WI*			
Mr. Young, AK				Mr. Thornberry, TX			
Mr. Miller, CA		✓		*Mr. Inslee, WA*	✓		
Mr. Tauzin, LA				Mr. Cannon, UT		✓	
Mr. Markey, MA	✓			*Mrs. Napolitano, CA*			
Mr. Saxton, NJ				Mr. Peterson, PA		✓	
Mr. Kildee, MI	✓			*Mr. Tom Udall, NM*	✓		
Mr. Gallegly, CA		✓		Mr. Schaffer, CO			
Mr. DeFazio, OR		✓		*Mr. Mark Udall, CO*	✓		
Mr. Duncan, TN				Mr. Gibbons, NV		✓	
Mr. Faleomavaega, AS				*Mr. Holt, NJ*	✓		
Mr. Hefley, CO		✓		Mr. Souder, IN		✓	
Mr. Abercrombie, HI		✓		*Mr. Acevedo-Vilá, PR*	✓		
Mr. Gilchrest, MD				Mr. Walden, OR		✓	
Mr. Ortiz, TX				*Ms. Solis, CA*			
Mr. Calvert, CA				Mr. Simpson, ID		✓	
Mr. Pallone, NJ	✓			*Mr. Carson, OK*	✓		
Mr. McInnis, CO		✓		Mr. Tancredo, CO		✓	
Mr. Dooley, CA		✓		*Ms. McCollum, MN*	✓		
Mr. Pombo, CA		✓		Mr. Hayworth, AZ		✓	
Mr. Underwood, GU				*Mr. Holden, PA*			
Mrs. Cubin, WY		✓		Mr. Otter, ID		✓	
Mr. Smith, WA	✓			Mr. Osborne, NE		✓	
Mr. Radanovich, CA		✓		Mr. Flake, AZ		✓	
Ms. Christensen, VI	✓			Mr. Rehberg, MT		✓	
				Total	13	24	

Congressman Mark Udall (D–CO) offered an amendment to the McInnis amendment in the nature of a substitute reducing the number of acres subject to the hazardous fuels reduction projects authorized by the bill and increasing the percentage of funds which must be spent on projects in the wildland-urban interface. This amendment was not agreed to by voice vote.

The McInnis amendment in the nature of a substitute was then agreed to by a roll call vote of 23 ayes to 14 noes, as follows:

COMMITTEE ON RESOURCES
U.S. House of Representatives
107th Congress

Date: October 8, 2002

Convened: 10:00am
Adjourned: 3:40pm

Meeting on: **H.R. 5319, Amendment in the Nature of a Substitute offered by Mr. McInnis (#1)**

☐ Attendance ☐ Voice Vote ☒ Roll Call Vote Total Yeas 23 Nays 14

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Hansen, UT, Chairman	✓			Mr. Jones, NC	✓		
Mr. Rahall, WV		✓		*Mr. Kind, WI*		✓	
Mr. Young, AK				Mr. Thornberry, TX			
Mr. Miller, CA		✓		*Mr. Inslee, WA*		✓	
Mr. Tauzin, LA				Mr. Cannon, UT	✓		
Mr. Markey, MA		✓		*Mrs. Napolitano, CA*			
Mr. Saxton, NJ				Mr. Peterson, PA	✓		
Mr. Kildee, MI		✓		*Mr. Tom Udall, NM*		✓	
Mr. Gallegly, CA	✓			Mr. Schaffer, CO			
Mr. DeFazio, OR		✓		*Mr. Mark Udall, CO*	✓		
Mr. Duncan, TN				Mr. Gibbons, NV	✓		
Mr. Faleomavaega, AS				*Mr. Holt, NJ*		✓	
Mr. Hefley, CO	✓			Mr. Souder, IN			
Mr. Abercrombie, HI	✓			*Mr. Acevedo-Vilá, PR*		✓	
Mr. Gilchrest, MD				Mr. Walden, OR	✓		
Mr. Ortiz, TX				*Ms. Solis, CA*			
Mr. Calvert, CA				Mr. Simpson, ID	✓		
Mr. Pallone, NJ		✓		*Mr. Carson, OK*	✓		
Mr. McInnis, CO	✓			Mr. Tancredo, CO	✓		
Mr. Dooley, CA	✓			*Ms. McCollum, MN*		✓	
Mr. Pombo, CA	✓			Mr. Hayworth, AZ	✓		
Mr. Underwood, GU				*Mr. Holden, PA*			
Mrs. Cubin, WY	✓			Mr. Otter, ID	✓		
Mr. Smith, WA		✓		Mr. Osborne, NE	✓		
Mr. Radanovich, CA	✓			Mr. Flake, AZ	✓		
Ms. Christensen, VI		✓		Mr. Rehberg, MT	✓		
				Total	**23**	**14**	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the proposed advisory committee authorized in the bill are not currently being nor could they be performed by one or more agencies, an advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. The bill authorizes "such sums" to be appropriated to carry out this bill. The Committee believes that enactment of this bill have no significant effect on the federal budget.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and implement hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands in the wildland-urban interface, in areas containing municipal water supply systems, in areas containing threatened and endangered species habitat, and in areas where windblow or blowdown or the existence or threat of large-scale disease or insect infestation pose a significant threat to forest and rangeland health and an attendant increase in the risk of catastrophic wildfire, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

ADDITIONAL VIEWS OF REPRESENTATIVE MARK UDALL

INTRODUCTION

Many western communities are at risk of catastrophic wildfires. The cause is a combination of severe drought, the overgrown conditions of many federal forest lands resulting from a past fire-suppression policies, and the growing number of settlements pressing against or into those forested areas. I have consistently worked to reduce those risks.

This year's terrible fires in Colorado and other States were a dramatic confirmation of those risks, but my concerns began much earlier. Since my first election to Congress, I have made it a point to visit parts of Colorado that have been burned by catastrophic wildfires or that are at risk of similar fires. I have walked areas that have been treated through controlled fires and mechanical thinning and seen the dramatic difference that such treatments can make in reducing wildfire risks. I have been to the front lines of a burning wildfire—the Big Elk Meadows fire near Estes Park—and I have talked with homeowners, foresters, forest ecologists, forest users and conservationists to get their perspectives and to try to understand what strategies can reduce the risks to lives and property.

What I have learned from these tours and conversations is that we need to do more to reduce the risks to our communities, our water supplies, and our citizens. That is why I have introduced legislation (H.R. 5098 of the 106th Congress and H.R. 3948 of the 107th Congress) to expedite the work of removing excessive fire-prone materials and to require the government to focus its efforts in the areas where this work will have the most immediate benefit for the most people.

H.R. 5913 shares some of these purposes—but, as introduced, it included many provisions that I considered not only unnecessary but unwise and inappropriate. So, I think that Chairman McInnis is to be commended for his willingness to work on a bipartisan basis to try to develop revisions that would reshape the bill toward one that would deserve and attract broad support.

I think it would have been preferable for the Committee to defer action on the legislation until that result was achieved. However, that did not occur.

When the Committee considered the bill, I voted for the Inslee substitute because while it had some serious flaws it would have made many necessary improvements to H.R. 5319 as originally introduced. After that substitute was rejected, I voted for the alternative substitute proposed by Representatives McInnis and Walden for the same reason. To lessen any misunderstandings, I want to explain my reasoning.

ENVIRONMENTAL ANALYSIS AND PUBLIC INVOLVEMENT

I do not think our national environmental laws are the obstacle to improving our response to the wildfire-related risks to our communities. So, I see no real need to make any fundamental changes in those laws. This is not to suggest that our national environmental laws are beyond improvement, nor that we cannot explore ways to reduce bureaucracy and lawsuits. But I think we should be very cautious about proposals to lessen public involvement in decisions about the management of the federal lands.

Both the Inslee substitute and the bill as reported would permit the Forest Service of Bureau of Land Management (BLM) to implement a fuel-reduction project without the full documentation normally required by section 102(2) of the National Environmental Policy Act of 1969 (NEPA).

I do not think such provisions are necessary. However, if the bill is to include any such provisions, I think those in the Inslee substitute would have been preferable because under that substitute the reduction in analysis would have applied in fewer instances and only to a limited number of projects involving a clearly-defined amount of merchantable wood products or salvage timber.

I think those provisions of the Inslee substitute more accurately reflected the reality that the real obstacles to progress in reducing fire risks have not been the environmental laws. Instead, the main obstacles have been inadequate focus on the highest-priority areas and a failure by the relevant land-managing agencies—under both the last Administration and this one—to do enough to develop and narrowly-tailored thinning projects that can enjoy broad support.

PRIORITY AREAS

I think the highest priority for fuel-reduction work needs to be on the forest lands that present the most immediate risks to our communities—those within the wildland/urban interface, or the "red zone," as it is called in Colorado—and to municipal water supplies. These are the places where forest conditions present the greatest risks to people's lives, health, and property, and so they should be where our finite resources—time, money, and people—are concentrated.

But to properly focus on these areas, we have to properly identify them. And in that regard, I considered the McInnis-Weldon substitute to be clearly preferable to the Inslee substitute—because the Inslee substitute included a seriously flawed definition of what would be considered "interface" areas.

The Inslee substitute defined the term "wildland-urban interface" as referring only to "an area within a half-mile of a community," without specifying what was meant by the term "community." I think such a definition is simultaneously too broad and too narrow.

It is too broad because it would give the land-managing agencies total discretion to decide what would qualify as a "community"—regardless of whether a place so identified had any residents at all. And it is too narrow because in many instances an arbitrary half-mile limit would exclude lands whose characteristics and proximity to actual communities should make them priority areas for fuel-reduction work.

I think the "interface" definition in the McInnis-Walden substitute is clearly preferable. By limiting the term to an area including either an "interface" or "intermix" community—and by adopting existing definitions of those terms—it provides an appropriate limitation on the discretion of the agencies in this regard. And, on the other hand, by not drawing an arbitrary mileage line, it appropriately reflects the reality that such a community's exposure to the risk of wildfire depends on terrain, forest conditions, and other factors that can vary greatly from one place to another and over time.

On the other hand, the McInnis-Walden substitute also applies to certain federal lands unrelated to communities or municipal water supplies, subject to the limit of 2 million acres annually. I think fuel-reduction projects on these lands should not have the same priority as the other lands covered by the bill, which is why I sought to reduce that limit by half. I regret the Committee did not adopt my amendment on this point, and may renew my efforts at a later point in the legislative process.

"ANALYSIS PARALYSIS," APPEALS, AND JUDICIAL REVIEW

As introduced, H.R. 5319 included (in section 2(a)(9)) a finding stating in pertinent part that "Federal land managers need immediate relief from certain procedural requirements that substantially burden land management professionals without bringing any value to the decision-making process."

That and all other findings were deleted by adoption of the McInnis-Weldon substitute—a definite improvement. But, like the original version, the bill as reported clearly is based on a similar premise—that the land-managing agencies are laboring under procedural burdens that unnecessarily delay work on fuel-reduction projects.

I think that premise has not been proved beyond doubt.

The Chief of the Forest Service has told our Committee that the agency has been slow to act to reduce the risks of catastrophic wildfire because of "analysis paralysis," meaning that the fear of appeals or litigation has made Forest Service personnel excessively cautious in the way they formulate and analyze fuel-reduction (and other) projects.

The chief may be correct in that diagnosis—certainly he is in a better position than I am to evaluate the mental states of his subordinates. But it is important to remember that the Chief has also testified that he does not think revision of the environmental laws is required in order to treat this condition—and on that point I am in full agreement.

And if fear of appeals and litigation is the cause of "analysis paralysis," how realistic is that fear? Over recent months, there has been considerable debate over that point, in our Committee and in the press. I think it is fair to say that debate has been more heated than enlightening, and that the question remains unresolved. I am not convinced that the case has been fully made that the ability of people to seek administrative or judicial review of Forest Service decisions has had such adverse effects that stringent limitations on those processes are essential.

As introduced, H.R. 5319 would have repealed the law that currently provides for appeals of Forest Service decisions, and would have instituted a new "predecisional review process" for certain agency actions. The bill as reported does not include such provisions, and does provide for administrative review of projects covered by the bill—another improvement made by the McInnis-Walden substitute.

On the other hand, projects covered by the Inslee substitute would have been exempt from any administrative appeal process—meaning that the only option for someone seeking to have it reconsidered would be litigation. I think it likely that in at least some—and perhaps many—instances problems could be resolved more quickly and with less expense through administrative, rather than judicial, review.

I think with regard to administrative appeals the bill as reported is a definite improvement over the original version, and also preferable to the Inslee substitute.

However, the bill as reported includes provisions related to judicial review that I think are imperfect at best, and probably completely unnecessary. The only reason that I could support their inclusion is that both these provisions and those related to administrative review include an automatic stay of agency action until the completion of the review process and the rendering of a decision on the merits of each issue raised by those seeking to change the outcome of an agency decision.

I think it would have been better if the bill did not attempt to make any change in the procedures of the courts, for reasons well stated in the dissenting views of Representative Udall of New Mexico.

OTHER DIFFERENCES FROM ORIGINAL BILL

In my opinion, the bill as reported represents an improvement over H.R. 5319 as introduced in many respects. These include the fact that the reported bill applies only to National Forest System lands and public lands managed by the Bureau of Land Management. The original bill would have applied to National Park System and National Wildlife Refuge System lands, which I think is not necessary and would be inappropriate.

I also think the fact that the bill as reported does not apply to designated wilderness or to wilderness study areas is a major improvement, as is the fact that National Monuments, National Conservation Areas, and other areas where removal of vegetation is prohibited or restricted. Those provisions of the reported bill are especially important to me because they make clear that the bill will not apply to the James Peak Protection Area designated by a bill I introduced that was recently enacted as Public Law 107–216.

On the other hand, the Inslee substitute would have more fully and appropriately recognized the special qualities of inventories roadless areas of the National Forests and the importance of retaining existing procedures applicable to activities in those areas. And it also would have provided similar recognition for Native American cultural or religious sites, which I think deserve more consideration than is provided by the bill as reported.

OTHER SHORTCOMINGS OF REPORTED BILL

As noted above, I voted for McInnis-Weldon substitute—that is, for the bill as reported—because it is far better than the original bill. However, I am under no illusion that it is perfect. It includes provisions that I think are imperfect, unnecessary, or undesirable, and it omits some things that I would have preferred be included.

I want to highlight some ways in which I think the bill should be revised further.

To begin with, I would further narrow the scope of the bill by excluding all the lands that would have been excluded by section 3(c) of the Inslee substitute. I would also reduce—or, better yet, eliminate—the amount of "other-at-risk Federal lands" and the lands containing threatened and endangered species habitat covered by paragraphs (3) and (4) of section 5(a) of the reported bill. While thinning projects likely should be done on some of these lands, I do not think it is appropriate to include them in this bill because I think the only reason for considering any changes in current law applicable to such projects is to respond to the threats to our communities and municipal water supplies.

Similarly, I would further heighten the priority the reported bill places on using funds provided for fuel-reduction projects in the "red zone" areas. Toward that end, when the Committee considered the bill I offered an amendment to require that 85% of such funds be expended on interface projects. That amendment was not adopted, but I think that such a change would be an improvement and I may seek to revisit this issue later in the legislative process.

I also think it would have been an improvement for the Committee to have adopted the amendment proposed by Representative Udall of New Mexico, in order to assure that the bill's provisions on judicial review—if they are retained at all—would not interfere with the timely handling of criminal cases.

I also think the bill would be improved by the addition of provisions related to community and private-land wildfire assistance similar to those that were included in section 7 of the Inslee substitute.

CONCLUSION

I do think it is appropriate for Congress to act to improve the effectiveness of the way the Forest Service and Bureau of Land Management are undertaking to reduce the risks of catastrophic wildfires to the lives, health, and property of people living in communities near federal forest lands.

However, I thought that H.R. 5319 as originally introduced was not well designed to accomplish that goal. That is why I have sought to improve it—and the bill as reported, while still defective in important ways, is much better than the original version.

I think the essential point of any legislation on this subject is to require the agencies to focus on work in the highest-priority areas. The reported bill does do that, to some extent. It would give a priority—not high enough, but a priority—to efforts to reduce the fire risks where they are needed most. It also is more limited in scope than the bill as introduced and relies to a greater extent on existing, time-tested administrative and judicial procedures.

Further, and importantly, the reported bill's provisions will terminate on September 30, 2005—a much shorter and more appropriate duration for provisions that I think should not be considered except as provisional and in the nature of an experiment.

In short, I voted for the reported bill because I am willing to consider legislation—although I am not convinced such legislation is necessary—to revise the administrative procedures applicable to Forest Service and BLM fuel-reduction projects intended to reduce the risks to our communities from catastrophic wildfires. I want to work with my colleagues on the Committee and in the Congress to try to make further improvements to H.R. 5319. But I will reserve final judgment and will want to watch closely how events unfold before deciding whether to support enactment of this or any similar measure.

MARK UDALL.

DISSENTING VIEWS OF REPRESENTATIVE TOM UDALL

Introduction

I, like other western members take very seriously the need to find a balanced approach to reduce the threat of catastrophic wildfires from occurring. Unfortunately, I could not support H.R. 5319 as amended during our committee mark-up because it fundamentally missed the mark of protecting our communities and their water supplies. H.R. 5319, as modified in our Committee, is far better than what was originally introduced on September 4, 2002 by Mr. McInnis. I believe that working together we can put together a bill that protects our communities from catastrophic fires without the need for expedited processes, without deadlines imposed on the federal judiciary, and without emasculating our environmental laws.

I would like to commend Forests and Forest Health Subcommittee Chairman McInnis, Mr. Walden, Mr. George Miller, and Mr. DeFazio for attempting to bring to our committee a bipartisan bill that reduces the threat of catastrophic wildfires, which threaten the livelihood of our communities, their water systems, and our pristine forests.

I participated in one of the several member level meetings to help find a balanced, bipartisan approach to reduce the threat of catastrophic wildfires. However, since members pressed the need to bring a bill before the committee prior to Congress's adjournment, I withdrew from the negotiations because I felt we were moving in such an expedient manner that any bill brought before the committee would reek of hurried work and would not afford other members of the committee the necessary time to review any final product.

The ongoing drought in the western United States has caused communities to band together to reduce the threat of catastrophic wildfire. These communities recognize that something has to be done to accelerate fuel reduction activities because the risk of severe fire is a harsh reality. Back in New Mexico's 3rd Congressional District, I have frequently met with ranchers, farmers, elected officials, community activists, and environmentalists who all agree that the Congress should spend more federal dollars to conduct proactive forest restoration and fuel reduction projects within the at-risk wildland/urban interface.

I voted for the alternative substitute offered by Mr. Inslee because I believe its adoption would have made several improvements to H.R. 5319, which I will discuss further in my dissent. However, I respectfully disagree with the definition of "wildland/urban interface" in the Inslee substitute and would have preferred the definition found in H.R. 3948, which was introduced by my close friend Representative Mark Udall, and which I, along with Representative Joel Hefley joined as original cosponsors.

H.R. 5319, the Healthy Forests and Wildfire Risk Reduction Act of 2002

The amendment in nature of a substitute to H.R. 5319, which was offered by Mr. McInnis and Mr. Walden, falls for short of our focus to reduce hazardous fuel in the wildland/urban interface, around communities that fall within the interface, and around key municipal water supplies. The amendment instead creates an expedited administrative appeal process that in my opinion, as a former federal prosecutor and Attorney General for the State of New Mexico, would likely lead to more litigation. This amendment would disqualify appeals filed by people who did not previously comment on the specific issues that they are raising in their appeals, and also those who did not file a notice of intent to file an appeal with the agency. Consequently, this would make it too easy for the Forest Service to dismiss troublesome appeals on the procedural ground that the appellants did not properly raise the issue in their comments or file a timely notice. Also, while the amendment authorizes the Forest Service to negotiate with appellants, it does not provide adequate time extensions to conduct the negotiations and reach an agreement before end of the appeals period. I also have concerns over the amendments authorization of 15 new Forest Service projects and an entirely new BLM program of 26 projects within the stewardship-contracting program. I believe that before Congress starts to expand further pilot projects that we wait for the data concerning the effectiveness of stewardship contract pilot projects approved in 1999, since implementation of nearly all of those projects is not yet complete.

What Is Wrong With Judicial Review?

The area of the bill that causes me particular concern pertains to section 9 of H.R. 5319 that addresses judicial review. This section in no way contributes to protecting our communities through its necessitating unprecedented deadlines, restrictions, and burdens on the federal judiciary for lawsuits challenging expedited appeals of hazardous fuel reduction projects. Furthermore, any subsequent judicial review of an agency decision would be rushed and unfair to citizens, and could wreak havoc on the federal courts in some regions.

Section 9 would require federal judges to hear expedited fuel reduction project cases "at the earliest possible date" and then issue final decisions within 60 days after the lawsuits are filed, with only a very limited allowance for time extensions. Thus, under the law fuel reduction projects would be assigned top priority in the federal court system virtually above all other civil and criminal cases. Even if only a small fraction of those projects are controversial enough to provoke a challenge, some district courts—particulary in the western states like New Mexico—could quickly be overwhelmed by having to meet the bill's legal prioritization and inflexible deadlines. This is why I hoped the amendment I offered during committee would have been adopted to ensure that civil cases filed pursuant to H.R. 5319 would not take precedence over criminal cases.

In addition, the time limitations contained within Section 9 do not reflect the policies of the Judicial Conference of the United States, the policy-making body for the federal judiciary, for three

primary reasons.[1] First, the Conference strongly opposes the statutory imposition of litigation priority and expediting requirements except in those cases warranting such review under 28 U.S.C. § 1657. Secondly, the Conference strongly opposes any attempt to impose statutory time limits for the disposition of specific cases in all branches of the federal courts. The Conference views Section 1657 as sufficiently recognizing the appropriateness of federal courts generally determining case management priorities. Third, the expansion of statutorily mandated priorities and expediting requirements run counter to the principles of effective case management. As the number of cases receiving priority treatment increases, the ability of the court to expedite review of any of these cases is restricted.

Section 9's expedited judicial review provision is unnecessary because the litigation of hazardous fuel reduction projects in federal court is infrequent and practically non-existent. An August 31, 2001, report by the General Accounting Office (GAO) demonstrates that the need for expedited judicial review does not exist. The GAO report found that of the 1671 hazardous fuels reduction projects identified for implementation in FY 2001, only 20 (or approximately 1%) of them were appealed.[2] None of these projects were litigated in federal court. Considering this, Section 9 is an exercise in frivolity, imposing unrealistic and unnecessary deadlines on the federal judiciary for lawsuits challenging final administrative decisions regarding fuel reduction projects.

The absurdity of the potential outcome due to the implementation of Section 9 is heightened by the fact that, according to the GAO, none of the Forest Service's hazardous fuel reduction projects were litigated during the first 9 months of FY 2001. Tragically, H.R. 5319 would almost certainly cause many of these projects to be litigated, due to public distrust and opposition caused by the loss of normal environmental safeguards and public participation opportunities.

In considering any national wildfire prevention and protection legislation, we should not diminish judicial review, but we should encourage and enhance public participation in the decision-making process. Moreover, the Committee on Judiciary has exclusive jurisdiction over matters relating to the federal courts and judicial review. As such, I share the concerns of the Ranking Member of the Judiciary Committee, Mr. Conyers, that the provisions in H.R. 5319, as they pertain to judicial review, "raise serious questions regarding the efficiency and efficacy of the federal courts that are best addressed by the Judiciary Committee."[3]

What Is Lacking in H.R. 5319?

What H.R. 5319 lacks is the emphasis on protecting communities as well as providing the tools necessary to assist them in those endeavors. I do not view H.R. 5319 as a Healthy Forest initiative;

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[1] See General Policy Statement of the Judicial Conference of the United States regarding expediting provisions for civil cases in the federal courts.

[2] See Forest Service: Appeals and Litigation of Fuel Reduction Projects. GAO–01–1114R August 31, 2001.

[3] See Letter from Representative John Conyers, Jr., Ranking Member, House Judiciary Committee to Chairman James V. Hansen and Ranking Member Nick J. Rahall, II, House Resources Committee, (October 8, 2002).

rather I view H.R. 5319 as a failed initiative to reduce the threat of catastrophic wildfires, which threaten communities and their water systems.

There are a lot of communities throughout the country and in my home state of New Mexico who are undertaking proactive efforts to reduce the fire risk. Unfortunately, H.R. 5319 contained not one provision that could assist communities and tribes with their work on fire reduction or restoration projects. Restoration projects greatly contribute to reducing the potential for a catastrophic fire to occur. I agree that funding proactive forest restoration projects to reduce the chances for fire is important rather than continuing to spend billions of dollars each year fighting fires. Two amendments that I had planned to offer would have strengthened H.R. 5319 in this regard. Both provisions were in the original text of the Inslee Substitute, which I supported.

The first amendment would have allowed the Secretary of Agriculture to make grants to States and Indian tribes for the purpose of promoting optimal firefighting efficiency at the Federal, State, Indian tribe, and local levels in the wildland/urban interface. These grants would also allow these communities to expand outreach and education programs to homeowners and communities about fire prevention.

Working to prevent fires is not only a job undertaken by the Federal Government but also a job that is being tackled by local communities and tribes. There are several key programs that are part of the National Fire Plan which include economic action programs, community and private land fire assistance, and burned area restoration and rehabilitation that have been drastically cut by the Administration over the last two budget cycles.

These funding constraints clearly affect the work that is being done on the ground by communities and tribes. My amendment would have provided needed assistance that tribes and communities could currently use to protect their communities from fire. Broad community involvement to prevent fires should be encouraged at all levels; however, it is not encouraged through the provisions of H.R. 5319.

My second amendment would have created a new section of H.R. 5319 entitled Forest Restoration and Value-added Centers.

This amendment would allow the Forest Service to enter into partnerships, and cooperative agreements with other Federal agencies or other organizations, including local nonprofit organizations, conservation groups, or community colleges in creating and maintaining the Restoration and Value-added Centers. The Forest Service regional offices through a competitive "request-for-proposal" process would select the Centers.

In addition, the Forest Service would provide financial assistance equaling 75 percent of each Center's budget. After the Center has operated for five years, the Secretary shall assess the Center's performance and begin to reduce, by 25 percent annually, the level of funding.

I believe these Centers would provide needed technical assistance to small communities and enterprises adjacent to public lands. This will make the latest technology and innovations available to rural communities and provide rural entrepreneurs an opportunity to use

and share their expertise and knowledge of the land and wood products, and be part of finding solutions to reducing fires as well as restoring our forest.

Why do we need Forest Restoration and Value-added Centers? We need them because the success of our efforts to restore fire prone forests to their natural condition will depend on how work is structured and byproducts are utilized. We need an integrated approach that includes three components:

- Building a high-skill, high-wage workforce especially in rural areas which can respond to the needs of the landscape;
- Investing appropriately to get the work done on the land.
- And adding value to by-products that result from restoration work

The establishment of Forest Restoration and Value-added Centers, through my amendment, would ensure we are being environmentally and socially responsible in how we go about the restoration of our public lands and stimulating economic development. These Centers would ensure that forest restoration occurs in a collaborative fashion and assists rural communities and enterprises in accessing the best information to develop good jobs that will help restore the health of our forests.

Forest Restoration and Value-added Centers will help federal land management agencies create effective partnerships with communities and others by providing authority to enter into cooperative agreements with nonprofit organizations and others to implement restoration projects.

Conclusion

It is my hope that, should H.R. 5319 come before the House, the areas I have covered in my dissent will be incorporated in a manager's amendment to the underlying bill. We need legislation to reduce the potential for catastrophic fires, protect our communities, and provide assistance to Tribes and states in the work they are currently undertaking to reduce the risk of fires. We do not need a bill that increases the potential for lawsuits, emasculates our environmental laws, and fails to protect our communities and their citizens.

For those reasons stated above I respectfully dissent from H.R. 5319 in its modified form.

TOM UDALL.

VIEWS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES PERTAINING TO EXPEDITED REVIEW

The Judicial Conference of the United States, the policy-making body for the federal judiciary, strongly opposes the statutory imposition of litigation priority, expediting requirements, or time limitation rules in specified types of civil cases brought in federal court beyond those civil actions already identified in 28 U.S.C. § 1657 as warranting expedited review. The Judicial Conference also strongly opposes any attempt to impose statutory time limits for the disposition of specified cases in the district courts, the courts of appeals, or the Supreme Court. (Report of the Proceedings of the Judicial

Conference of the United States, September 1990, p. 80.) Section 1657 currently provides that United States courts shall determine the order in which civil actions are heard, except for the following types of actions that must be given expedited consideration: cases brought under chapter 153 (habeas corpus petitions) of title 28 or under 28 U.S.C. §1826 (recalcitrant witnesses); actions for temporary or injunctive relief; and actions for which "good cause" is shown. The Judicial Conference views 28 U.S.C. §1657 as sufficiently recognizing both the appropriateness of federal courts generally determining case management priorities and the desire to expedite consideration of limited types of actions.

Expansion of statutorily mandated expedited review is unwise for several reasons. Individual actions within a category of cases inevitably have different needs of priority treatment, which needs are best determined on a case-by-case basis. Also, mandatory priorities and expediting requirements run counter to principles of effective civil case management. In addition, as the number of categories of cases receiving priority treatment increases, the ability of a court to expedite review of any of these cases is restricted.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 8, 2002.

Hon. JAMES V. HANSEN,
Chairman, Committee on Resources, House of Representatives, Longworth House Office Building, Washington, DC.

Hon. NICK J. RAHALL II,
Ranking Member, Committee on Resources, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN HANSEN AND RANKING MEMBER RAHALL: I understand that on October 8, the Committee on Resources intends to mark up a version of H.R. 5319 that contains a section that places significant limitations on the federal courts' ability to review a Hazardous Fuels Reduction Project ("HFRP"). Among other things, the October 3 version of the bill: (1) limits the venue for challenging a HFRP, (2) limits the time period for filing a court challenge to a HFRP, (3) requires the federal district courts to expedite consideration of these actions, (4) sets a 60-day timetable for a federal district court to render a decision in a challenge to a HFRP, (5) limits extensions of the 60-day deadline for a federal district court to render a decision in a challenge to a HFRP, and (6) sets a 60-day timetable for a federal court of appeals to render a decision in any appeal from a district court decision regarding a HFRP.

The Committee on the Judiciary has exclusive jurisdiction over matters relating to the federal courts and judicial review. I believe that the judicial review provisions in H.R. 5319 raise serious questions regarding the efficiency and efficacy of the federal courts that are best addressed by the Judiciary Committee.

I request that the Resources Committee drop the judicial review provisions from H.R. 5319. In the alternative, I will encourage the

Judiciary Committee to exercise its jurisdiction and mark up the sections of H.R. 5319 over which the Committee has jurisdiction.

Sincerely,

JOHN CONYERS, Jr.,
Ranking Member, House Judiciary Committee.

DISSENTING VIEWS

Years of fire suppression and forest mismanagement have created build-up of forest fuels that in turn fuels unnaturally large and intense fires. H.R. 5319 as reported attempts to address the perceived need to expedite fuels treatment to reduce the risk of catastrophic fire in order to protect communities and homes. While its goals are meritorious, its approach is misguided and flawed.

H.R. 5319 undermines the National Environmental Policy Act (NEPA) by eliminating the requirement that alternatives to the proposed action be considered. The premise of NEPA is that examining reasonable alternatives allows for mitigation of ill-effects and improves decision making. CEQ has called the analysis of all alternatives "the heart of the NEPA process." Under the bill, the agency would not even be required to consider a "no action" alternative. Thus, the bill reduces public participation opportunities and diminishes environmental safeguards.

Expedited procedures combined with a broad scope serve to threaten forest health. The scope of H.R. 5319 is so vast and definitions so vague as to allow the Secretaries virtually unfettered discretion to conduct projects on large swaths of national forest and BLM land. Broadly defined hazardous fuels treatment projects under expedited procedures can take place in the wildland-urban interface, in watersheds, in certain critical habitat, and on "at-risk lands." Within these categories, only some of the treatments are limited to those lands at greatest risk of catastrophic fire. The definition of interface lacks a distance demarcation. thereby making the geographic scope of the bill extremely broad. The definition of water supply systems has the same effect. The inclusion of threatened and endanger species habitat and "other at-risk" lands also creates significant loopholes for lands far from communities on which projects with expedited NEPA analysis can occur. Under the terms of the bill, up to six million acres over three years could be treated outside of municipal watershed interface areas, and an unlimited amount of acres could be treated in the ill-defined interface and watershed areas.

H.R. 5319 fails to adequately protect old-growth and sensitive areas, such as roadless areas, by allowing projects to proceed with truncated environmental analysis. Accordingly, under the bill, large-scale logging in roadless areas may occur under an expedited process. The Forest Service has previously concluded that logging of roadless areas is one factor that can disqualify an area from wilderness designation for up to a century. The bill reverses the presumptions that roadless areas should be afforded a high degree of protection and that logging should be allowed in roadless areas only under very rare circumstances. By allowing road construction—an environmentally damaging activity—in projects using ex-

pedited procedures, the bill further fails to protect resources or instill public trust.

H.R. 5319 not only changes how NEPA works on much of the federal landscape, it also repeals the Appeals Reform Act, which codified the Forest Service's administrative appeals process in 1992. In its place, it establishes a truncated procedure that gives interested citizens less time to prepare an appeal and forecloses opportunities to challenge government actions. Limitations on citizen access to the courts are so strict on issues that can be raised in an appeal and subsequent suit, i.e., the appellant must have submitted "detailed and specific comments" on an issue related to the project, that it effectively changes standing and exhaustion requirements. Currently, an appellant can raise any issue on appeal that was raised by any party during the comment period. The appeals provisions of H.R. 5319 have the effect of greatly diminishing opportunities for public comment on environmental assessments as well as denying citizens the right to challenge implementation of treatment projects in court as the issue raised during implementation could not have been foreseen during the comment period.

Similarly, H.R. 5319's judicial review provisions change Federal Rules by limiting venue, reducing time in which to bring suit (from 6 years to 15 days), and imposing tight deadlines on courts in which to act. The effect is to severely curtail access to the courts and to place thinning cases above all others in terms of judicial priorities. The time frames are such under appeals and suits provisions that citizens may be forced to sue to preserve their limited right to hold the agency accountable, and may be foreclosed from bringing Endangered Species Act, Clean Air Act, or other claims requiring 60 days notice. At the same time, an automatic stay provision regardless of the merits of the case will encourage suits and contribute to gridlock. These draconian changes to how the agencies and courts allow for public input and challenge is in the face of questionable evidence of any problem with litigation of hazardous fuels reduction projects; according to an August 31, 2001 General Accounting Office report, approximately 1 percent of the nearly 1,700 hazardous fuels reduction projects were appealed and none were litigated in the first nine months of FY2001.

Finally, H.R. 5319 expands the controversial stewardship contracting program by authorizing 15 new Forest Service projects and an entirely new BLM program of 26 projects. This program would give both agencies authority to pay for thinning with large diameter trees with no environmental sideboards, when logging has in large part contributed to the fuels build-up problem. Furthermore, the bill ties the pilots not only to hazardous fuels projects alone but to those done with streamlined NEPA processes pursuant to the bill. Thus, these provisions would give the Forest Service, an agency notorious for its lack of fiscal and environmental accountability, even more license to abuse assets free of public scrutiny.

In sharp contrast to H.R. 5319, the Inslee substitute leaves NEPA intact and focuses thinning and prescribed burns in high-risk areas near communities. The proposal uses an already existing NEPA authority (categorical exclusions (CEs)) that exempts non-controversial projects from full NEPA analysis and administrative appeals. Projects covered by the CE provisions can take place only

in the interface areas and watershed areas, are limited to 2.5 million areas a year, and may remove a limited amount of timber. Furthermore, the Inslee substitute focuses 85% of the funds for all hazardous fuels projects in the interface and key municipal watersheds. The provision applies to all expenditures for hazardous fuels projects, not the limited subset of funding for projects covered by expedited procedures, as is the case in H.R. 5319. H.R. 5319 limits only 70% of funds expended on projects covered by the bill to the interface and watershed—leaving 30% of funding for projects covered by the bill and 100% of other funding to be spent on controversial projects in the back country. Under the terms of the Inslee substitute, expedited projects may not take place in sensitive areas such as roadless areas and road-building is prohibited. The Inslee substitute includes small diameter trees as the focus of projects, and water quality as the goal of watershed projects. These provisions, along with narrow definitions, serve to focus the expedited thinning activity in areas where consensus exists.

While the Inslee substitute's CE provision forecloses appeals on all projects covered by the bill (including timber sales), it means existing appeals procedures, citizens' rights to challenge government actions in court, and judicial discretion to set priorities. The substitute also removes perverse incentives to log by directing all receipts to the Treasury. Finally, the substitute includes a provision for block grants for tribes and states, as the majority of at-risk lands are on non-federal lands.

In short, H.R. 5319 fails to focus fuel reduction projects in noncontroversial areas to protect homes and communities; undercuts NEPA, our fundamental environmental law; fails to provide assistance to states or tribes; creates significant roadblocks to citizen participation in government decision making on federal land management; curtails the right to sue, while at the same time creating a judicial train wreck; and expands a pilot program that could give the agencies carte blanche to log. Rather than getting the much-needed work of protecting communities and restoring landscapes done, H.R. 5319 has the potential to deepen public mistrust of land management agencies, to generate further polarization, to degrade our forests, and to create chaos in the courts.

JAY INSLEE.
BETTY MCCOLLUM.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, October 11, 2002.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On October 8, 2002, the Committee on Resources ordered reported H.R. 5319, the Healthy Forests Reform Act of 2002. The bill was referred to the Committee on Resources and additionally to the Committee on Agriculture.

Earlier this week, my Chief Counsel forwarded a copy of the reported text to your staff for your review. You will note that section 104 of this bill affects judicial review of certain decisions made

under the authorities granted to the Secretaries of Agriculture and the Interior under this bill. I believe this provision is in the purview of the Committee on the Judiciary.

Given the importance of moving this legislation before we adjourn and the dwindling number of days remaining in the 107th Congress, I ask that you not seek a sequential referral of H.R. 5319.

By foregoing a sequential referral of H.R. 5319, the Committee on the Judiciary would not be waiving its jurisdiction over section 104, nor would this action serve as precedent for other similar measures. In addition, if a conference committee is convened on the bill, I would support your request to have the Committee on the Judiciary represented on the conference for those matters in your jurisdiction. Finally, I would be pleased to include in the Committee on Resources bill report on H.R. 5319 our exchange of letters regarding this bill. I plan to file the report on Tuesday, October 15.

Thank you for your cooperation and that of Robert Tracci of your staff. It has been a pleasure to work with both of you during my tenure as Chairman of the Committee on Resources.

Sincerely,

JAMES V. HANSEN,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 15, 2002.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: In recognition of the desire to expedite floor consideration of H.R. 5319, the "Healthy Forests Reform Act of 2002," the Committee on the Judiciary hereby consents to waive further consideration of the bill. H.R. 5319, as introduced and reported by the Committee on Resources, contains subject matter that falls within the legislative jurisdiction of the Committee.

The Committee on the Judiciary takes this action with the understanding that the Committee's jurisdiction over the provisions in H.R. 5319 within the Committee's jurisdiction is in no way diminished or altered, and that the Committee's right to the appointment of conferees during any conference on the bill is preserved.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

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